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4 NATIVE AMERICAN HERITAGE COMMISSION MEETING

5 SACRAMENTO, CALIFORNIA

6 APRIL 6, 2010

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15 Meeting Transcribed by: Rosalie A. Kramm, CSR #5469

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## 1 NAHC COMMISSION MEETING SACRAMENTO, CALIFORNIA

2 APRIL 6, 2010

3 CHAIRMAN RAMOS: All right. On the agenda  
4 there are some corrections and some things we need to do  
5 to the agenda before we get started on introductions of  
6 Commissioners.

7 Under "Old Business," Items 1 and 2 have been  
8 pulled. Under "New Business," Items No. 1 and 2 have  
9 been pulled leaving items for discussion here today is  
10 Item 3, and on your paper it shows 3, 3, twice, but if  
11 you can just put 3, 4 on there, that's what it really  
12 is. So those will be the items that we'll be discussing  
13 today.

14 And we'll go ahead and start at the end of the  
15 table for introductions with Commissioners and Staff.

16 COMMISSIONER SHERMAN: Jill Sherman. I'm from  
17 the Hoopa Tribe of Northern California, and I'm a  
18 Commissioner. Good to see you guys.

19 COMMISSIONER TUMAMAIT-STENSLIE: Julie  
20 Tumamait-Stenslie, Tribal Chair of the Barbareno Band of  
21 Mission Indians out of Ventura County.

22 COMMISSIONER MIRANDA: My name is Laura  
23 Miranda. I am from the Pechanga Band of Luiseno Indians  
24 in Southern California, Riverside County area, and I am  
25 Vice Chair of the Native American Heritage Commission.

1           CHAIRMAN RAMOS: James Ramos, I'm Chairman of  
2           the Native American Heritage Commission, also Chairman  
3           of San Manuel Band of Mission Indians.

4           MR. MYERS: Larry Pomo and Staff of the  
5           Commission.

6           MS. CORDERO: Antonette Cordero, Deputy  
7           Attorney General for the State of California.

8           MS. TREADWAY: Debbie Treadway, Native American  
9           Heritage Commission Staff.

10          MR. SINGLETON: Dave Singleton, Native American  
11          Heritage Commission Staff.

12          CHAIRMAN RAMOS: As you can see we ended up  
13          having a -- one of our Commissioners who had a -- an  
14          emergency at home. So we're lacking one as a quorum,  
15          but we're going to go ahead and continue to move  
16          forward.

17          Did we get all the introductions out of the  
18          way? All right.

19          Moving on, there is nothing under "Old  
20          Business."

21          Under "New Business," Item 3 becomes No. 1, I  
22          guess, if you want to stay organized on it. But Item 3,  
23          Resolution 1 through 10 supporting investigation of  
24          grave robbing, Ventura.

25          LARRY MYERS: This is -- this is -- was an

1 action item, but because we don't have any quorum, we  
2 can't take any action, but Julie is familiar with it,  
3 and Julie brought it to our attention and Julie has a  
4 few words she wants to talk to the Commissioners about.

5 COMMISSIONER TUMAMAIT-STENSLIE: Well, I'm  
6 happy to. This was taken by Deputy Attorney, Elisabeth  
7 Main, Ventura County. This is a site that has been very  
8 popular over three generations of family -- people going  
9 out and looting this site. It was the landowner who  
10 found these men digging at night with flashlights,  
11 watched them for over a half an hour before calling the  
12 Ventura County Police, and they caught them in the  
13 action of digging and looting in this site.

14 You know, this -- it was an older man, his  
15 son -- oh, that's my phone. I don't have a -- I don't  
16 have a cat. I brought my kitty with me.

17 So it was a man in his 40s, his son who is in  
18 his early 30s, and then a new arrival, a young man in  
19 his 20s. So the older two, their grandfather went out  
20 and looted this site. He taught his son who's taught  
21 his son who has now brought in somebody else.

22 We are hoping that they will, you know -- it's  
23 really, really difficult for us as native peoples to --  
24 to seek prosecution. Hopefully, this will go to trial  
25 and that there won't be any decisions on pretrial.

1 There is an arraignment hearing on the 15th of April in  
2 the Ventura County Courthouse, and so we'll be there.

3 I've been -- I will be subpoenaed as a witness  
4 to help in this whole process. And we will -- our  
5 tribal band will be present at the sentencing and make  
6 our statement as to help educate these -- you know, the  
7 judge, the jury, and hopefully be able to help them  
8 understand what has happened here.

9 You know, grave robbing and -- and pot hunting  
10 and looting sites has become such a national activity,  
11 it's almost recreational for many people, and it has to  
12 stop. We can go way back into the early times of  
13 religious freedom and why people came to the United  
14 States, and it was to be rid of the prosecution and fear  
15 of prosecution of their religious beliefs, but when they  
16 came to America, somehow our native religion got pushed  
17 aside, and our religious freedoms had to be brought in  
18 back to us in our century.

19 So we are trying to, as much as we can, look at  
20 the laws of what's happening here in this case.

21 Having them caught in the act really is  
22 hopefully going to help. We don't know what's going  
23 to -- the artifacts, because they are all just about all  
24 of them -- they confiscated artifacts from three homes.  
25 So there is probably a total of over 200 artifacts that

1 have been collected all total, not include -- including  
2 the ones that they were removing from the site.

3 So we're hoping that they will be cooperative  
4 in telling us where the other artifacts came from.  
5 We're working with the landowner and the Deputy District  
6 Attorney to see that the items will be reburied, but  
7 after a study and documentation of them, because even  
8 for our own people the education that -- of some of the  
9 items may be helpful for us to help connect some of the  
10 dots of our culture because a lot of our knowledge was  
11 not passed down to us.

12 So -- but they will be re-entered. They will  
13 be all buried back into the earth. So we're just  
14 waiting to hear. We'll be at the arraignment and be  
15 present with this whole process.

16 But I want to thank the Commission for putting  
17 together that resolution, and as soon as we have the  
18 authority to accept it, it will be sent off to the  
19 District Attorney's Office. So thank you.

20 CHAIRMAN RAMOS: Thank you.

21 Any other questions on that item?

22 Hearing none, moving on to Item 4, Padre Dam  
23 Municipal Water District, Viejas Band of Kumeyaay  
24 Indians request investigation here pursuant to PRC  
25 5097.9, Dave Singleton.

1           This was originally on as an action item. You  
2 heard we lack one member for a quorum; however, we are  
3 going to be looking at having a meeting in Southern  
4 California within the next three to four weeks so that  
5 we can address it with a full quorum.

6           MR. SINGLETON: Mr. Chairman, Honorable  
7 Commissioners, tribal leaders, guests, my name is Dave  
8 Singleton. I'm program analyst for the Native American  
9 Heritage Commission, and I did the Staff investigation  
10 report for Larry Myers, our Manager, for the -- this is  
11 the title of the project, as -- as it's listed in the --  
12 the State Clearinghouse CEQA documents, Eastern Service  
13 Area, Secondary Connection, Ridge Hill Road Facilities,  
14 the Project State Clearinghouse 2008091003, construction  
15 of a water system connection and 2.5 million gallon  
16 water reservoir.

17           This project is located approximately 20 miles  
18 east of the City of San Diego near an area known as  
19 Johnstown. It's located within 10 miles of the Barona,  
20 Viejas, and Sycuan Indian Reservations, all a Kumeyaay,  
21 Diegueno cultural affiliation.

22           The lead agency for this project under CEQA is  
23 the Padre Dam Municipal Water District, a public agency.  
24 The project site is public land owned by the Padre Dam  
25 Municipal Water District. The project site is



1 approximately one acre on a parcel of about two acres.

2 If you saw my Staff report, there is a site map  
3 taken from the Black & Veatch engineering report that  
4 shows the project site and -- and roughly the -- the --  
5 at the site of -- of the parcel.

6 The proposed facility would construct a  
7 reservoir, 2.5 million gallons, and a pump station,  
8 would provide greater capacity for the East County.

9 San Diego County was ravaged by fires in recent  
10 years, 2001 Viejas fire, 2003 Cedars fire, and the 2007  
11 Harris fire. So the water capacity, you know, would  
12 meet a public benefit.

13 The project has had three different  
14 archeological firms and four Native American Monitors.  
15 The project is being conducted under guidelines and  
16 processes of CEQA, the California Environmental Quality  
17 Act of 1970 as amended.

18 The lead agency, Padre Dam Municipal Water  
19 District, as a public agency, is headquartered in  
20 Santee, the City of Santee in San Diego County, East  
21 County, and as part of the CEQA process, the District  
22 did approve a mitigated negative declaration.

23 A review of the CEQA initial study and the  
24 mitigated negative declaration did not identify any  
25 significant impacts relative to human remains.

1           The Staff of the NAHC, Native American Heritage  
2 Commission, as part of its normal work on such projects  
3 and as part of this investigation, made one, a site  
4 visit to the project site August 31st, 2009, accompanied  
5 by Native American Monitor Carmen Lucas. The Staff also  
6 had in-person interviews with Native American Monitor  
7 Carmen Lucas on that date.

8           In addition, as part of the investigation,  
9 telephone interviews were had with Native American  
10 Monitor Clint Linton, former Native Monitor at that  
11 site; on February 2nd, 2008, again with Native American  
12 Monitor Carmen Lucas; and also with Native American  
13 Monitor Frank Brown of the Viejas Indian Reservation  
14 in -- on January 4th, 2010; and also again on February  
15 17th and -- and 24th.

16           Representatives of the Tribal Council of the  
17 Sycuan Band of the Kumeyaay Nation, also a member of the  
18 Kumeyaay Cultural Repatriation Committee, a tribal  
19 consortium visited the project site in February, as did  
20 members of the Tribal Council of the Viejas Band of  
21 Kumeyaay Indians. They both expressed their concerns to  
22 the NAHC in -- in writing.

23           In fact, Sycuan declared that this is a  
24 sanctified cemetery in a letter that's a part of our  
25 Staff report, and Viejas Tribal Council declared that

1 this is a Kumeyaay burial ground.

2 Here is the evidence of Native American burials  
3 at the site. The project first came to the attention  
4 of -- of the NAHC when it received a report of human  
5 remains termed "Native American" in origin by the  
6 San Diego County Medical Examiner on August 7th, 2007.  
7 The remains were discovered during a cultural survey at  
8 the project site. This was the first of several reports  
9 the Native American Heritage Commission received  
10 concerning human remains that were declared Native  
11 American in origin by the San Diego County Medical  
12 Examiner who notified the NAHC pursuant to California  
13 Health and Safety Code Section 7050.5. We have exhibits  
14 of -- of those reports, A-1 through A-4, as part of the  
15 Staff report.

16 In response to the reports of Native American  
17 human remains, the NAHC designated the Kumeyaay Cultural  
18 Repatriation Committee as Most Likely Descendant or MLD.  
19 They did this pursuant to the California Public  
20 Resources Code Section 5097.98.

21 The first designation was made right after the  
22 report came from the San Diego County Medical Examiner  
23 on August 8th, 2007, and then it was reaffirmed in May  
24 of 2009.

25 Now, KCRC or the Kumeyaay Repatriation

1 Consortium or Committee is a consortium of 13 sovereign  
2 Diegueno, Kumeyaay Nations in San Diego County.

3 The -- the consortium also includes the Viejas  
4 Band of Kumeyaay Indians, the Sycuan Band of the  
5 Kumeyaay Nation, and the Barona Band of Mission Indians.  
6 Padre Dam did repatriate to KCRC all known remains and  
7 artifacts as requested by KCRC in -- in 2009, and there  
8 is documentation in a letter from the Padre Dam  
9 affirming that.

10 On February 8th 2010, KCRC delegated its  
11 authority as MLD to one of its members, which it can do  
12 under California Public Resources Code Section 5097.98,  
13 so the Viejas Band of Kumeyaay Indians from that time  
14 forward continued to carry out the function of the MLD  
15 for this particular project.

16 There was evidence of Native American cultural  
17 resources at the site. Prior to the early cultural  
18 survey and the initial study prepared pursuant to CEQA,  
19 and conducted at the project site, the -- the site was  
20 known to contain an archeological recorded site in the  
21 information center, part of the California Historical  
22 Resource Information System at San Diego State. That  
23 site is known as CA-SDI-18472. And that -- that was --  
24 that was declared or recorded in 2007 by EDAW,  
25 Incorporated, an archeological and environmental firm

1 now known as AECOM, through their San Diego -- based in  
2 San Diego.

3 According to conversations with Tribal Elder  
4 Carmen Lucas, one of the Native American Monitors from  
5 the Kwaaymii Laguna Band of Mission Indians, and with  
6 the senior archeologist, Rebecca Apple of EDAW,  
7 Incorporated, the archeological site that was recorded  
8 represented a large milling feature, an outcrop of  
9 bedrock containing border cups surrounded by extensive  
10 charred and burned and unburned pottery fragments.

11 In the opinion of the archeologist and the  
12 opinion of the firm EDAW, it extended far beyond the  
13 project site, the area potentially affected, across the  
14 road and into the nearby trailer park.

15 Ms. Lucas was informed that EDAW, as a result  
16 of their cultural survey, recommended avoidance; that is  
17 that the site should be -- the project should be moved  
18 from this particular site, avoidance as defined by CEQA  
19 Guideline Section 153770, and recommended that another  
20 site be considered for the project.

21 A different cultural resource management firm  
22 was employed by Padre Dam, ASM Affiliates, located in --  
23 in San Diego. They -- they were retained by the  
24 Municipal Water District for additional work and  
25 analysis.

1           A number of concerned -- concerns about Native  
2 American cultural resources have been expressed to the  
3 NAHC during this period, most -- most of which came from  
4 three of the four Native American Monitors who worked  
5 for Padre Dam at -- at the site.

6           Carmen Lucas, for example, told the NAHC of --  
7 of an assessment by Micah Hale, the principal  
8 investigator with ASM Affiliates, the current  
9 archeological firm of record, and he indicated that the  
10 charred pottery he found at the site was the third  
11 densest concentration in San Diego County that he had  
12 seen.

13           Native American Monitor Carmen Lucas indicated  
14 that this -- this find is indicative of a sacrificial or  
15 ceremonial area and should be avoided. Ms. Lucas also  
16 noted that the color and texture of the midden soil at  
17 the site near -- near the charred, burned and unburned  
18 pottery, was characteristic, indicative of long-term use  
19 and consistent with burial sites in the Diegueno,  
20 Kumeyaay tradition.

21           Ms. Lucas also noted that while this site has  
22 been highly disturbed, that fact does not diminish its  
23 sacredness.

24           Clint Linton, an archeologist who also worked  
25 as a Native American Monitor, he's a member of the



1 Santa Ysabel Band of Diegueno Indians and a -- a -- a  
2 professional archeologist, supported Ms. Lucas' opinion  
3 that the site was ceremonial and that it was a site of  
4 significant -- of religious and cultural significance to  
5 the Diegueno and Kumeyaay people of the area and should  
6 be avoided.

7 A third Native American Monitor, Frank Brown, a  
8 member of the Viejas Band of Kumeyaay Indians, also  
9 shared the same opinion, that this site was sacred, it  
10 should be avoided, because of both Native American  
11 burials discovered at the site as many as eight  
12 fragments were reported to the Native American Heritage  
13 Commission by the Medical Examiner of San Diego County,  
14 and because of the obvious evidence of Native American  
15 cultural artifacts, obvious also to me when Carmen and I  
16 visited the site in August -- on August 31st, 2009.

17 Ms. Lucas and Mr. Linton served the project as  
18 Monitors during 2007 to 2009. Frank Brown was asked to  
19 serve as Native American Monitor for the lead agency in  
20 late 2009. Howard Cuero, who we did not interview,  
21 Howard is with the Campo Kumeyaay Nation, and he's the  
22 current Native American Monitor. We did not interview  
23 him because of his recent hire and limited experience  
24 with this project.

25 The archeology firms that contacted us, you

1 know, during the time they worked with this site, with  
2 the project, under contract to Padre Dam, or subcontract  
3 to one of the archeological firms, included EDAA, as  
4 I've mentioned, now known as AECOM, Incorporated,  
5 San Diego; Dudek & Associates. They may have been a sub  
6 to ASM Affiliates. They do have a San Diego County  
7 address, although the person that talked to me was in  
8 Santa Barbara when he was working on the project.

9 Now, project preconstruction began on this  
10 project in December of 2009 and included impacts of  
11 heavy equipment at the project site, including the core  
12 area identified for tribal cultural resources that --  
13 that we have presented here today. And part of the  
14 large milling feature had been removed through blasting.  
15 Human remains and grave goods have been removed from the  
16 property through a 6 percent archeological data recovery  
17 plan that the archeology -- archeologists prepared for  
18 the project. And it is expected that additional remains  
19 and grave goods will be impacted, inspected on the part  
20 of -- so the Native American Heritage Commission is  
21 informed, you know, by the former Native American  
22 Monitors at the site, and now by the tribes, Sycuan Band  
23 of the Kumeyaay Nation, and the Viejas Band of Kumeyaay  
24 Indians.

25 Now, work did stop when we had urgent calls,



1 you know, that the -- the milling feature was being  
2 destroyed, damaged, and it was near where Native  
3 American human remains were -- were recovered.

4 Our manager, you know, asked that we write a  
5 letter, which we did, and on February 24th, 2010, Padre  
6 Dam, through their archeologist, confirmed receipt of  
7 that letter on February 25th and -- and work has ceased.

8 Now, California law on Native American burial  
9 sites is pretty clear. California law acknowledges that  
10 Native American burial sites may be discovered anywhere  
11 in California. When -- when California Public Resources  
12 Code 5097.98 was amended in 2007, by the passage of AB  
13 2641, it states in Section 1, "Legislature Finds and  
14 declares all of the following: Private and public lands  
15 in California may contain the remains of ancestors to  
16 contemporary California Native Americans. Current state  
17 law provides a limited measure of protection for  
18 prehistoric and historic California Native American  
19 human remains and sites containing multiple human  
20 remains. Therefore, anywhere Native American human  
21 remains are discovered is considered a Native American  
22 burial ground, and such a site may also include multiple  
23 Native American burials defined by California law. Even  
24 if the graveyard is not public, Indian cemeteries --  
25 even though the graveyard is not public, Indian

1 cemeteries, even though unmarked, qualify as  
2 cemeteries."

3           The Padre Dam site yielded eight different sets  
4 or fragments of human remains recorded by the San Diego  
5 County Medical Examiner to the NAHC. A forensic  
6 anthropologist under contract to the Medical Examiner's  
7 office has visited the site as part of the process for  
8 making such a determination. The fact that more than  
9 one discovery of Native American human remains is  
10 evidence in the opinion of the Diegueno, Kumeyaay  
11 descendants that the site is a sanctified burial site,  
12 given that presence and also of not only human remains,  
13 but associated grave goods, and -- and the condition and  
14 the high density of occurrence that the project has  
15 experienced, and therefore the project site should be  
16 avoided.

17           "California law and Native American cultural  
18 sites: California Code of Regulations, Section 15064,  
19 of the 2007 CEQA Guidelines defines a significant impact  
20 on the environment as a substantive, potentially  
21 substantial adverse change in any of the physical  
22 conditions within an area affected by the proposed  
23 project, including objects of historic or aesthetic  
24 significance." Also the -- the -- that's a quote from  
25 the California Code of Regulations.

1           Also, the NAHC recommends that lead agencies,  
2   such as Padre Dam in this case, consider avoidance as  
3   defined by -- by this section of the California Code of  
4   Regulations and -- and the CEQA guidelines, when  
5   significant cultural resources could be affected by the  
6   project. California law extended its protection to  
7   burial sites to include items associated with Native  
8   American burials.

9           Again, in 2003 the California legislature  
10   enacted the Native American Historic Resources  
11   Protection Act, and that's in California Public  
12   Resources Code Section 5097.993 and 994, this extended  
13   protection of burial sites to include also any  
14   archeological or historic Native American rock art or  
15   any archeological or historic feature of a Native  
16   American historic cultural or sacred site on public or  
17   private land, and made any willful or malicious  
18   destruction of such Native American items a criminal  
19   violation.

20           The world view of non-Indians and those of  
21   Native Americans differ on the importance of cultural  
22   resources, particularly those associated with burials  
23   and with associated grave goods.

24           California law clearly gives control in terms  
25   of reburial recommendations of such Native American

1 items to the descendents of those articles, those  
2 remains which have religious or cultural significance  
3 and/or importance, whether or not such items were  
4 discovered on public or private land.

5 And this is a decision upheld by the  
6 California -- Third Appellate Court, State of  
7 California.

8 The NAHC Staff has been disturbed by reports  
9 that the project construction of the Padre Dam, activity  
10 at the site was destroying a recorded site and -- and --  
11 and items of historic and religious significance to  
12 Native American descendants, the Diegueno and Kumeyaay  
13 people in San Diego County.

14 And so that's the reason the NAHC wrote to the  
15 Padre Dam Municipal Water District asking them to stop  
16 until a complete analysis is made of the impact of this  
17 project on Native American cultural resources at the  
18 site.

19 The Viejas Band and three Native American  
20 Monitors, Ms. Lucas, Mr. Linton, and Mr. Brown, all feel  
21 that the project site has features that are of that  
22 religious and cultural significance to the Diegueno and  
23 Kumeyaay people. They have individually and  
24 collectively told the NAHC all along, with the letters  
25 from the Viejas Band of Kumeyaay Indians and the Sycuan

1 Band of the Kumeyaay Nation, these are our items of  
2 cultural significance. Therefore, the NAHC Staff  
3 accepts the determination of the Diegueno, Kumeyaay  
4 Tribal people and tribes and Elders that the site is  
5 sacred and eligible for inclusion in the NAHC Sacred  
6 Lands File Inventory as authorized by California Public  
7 Resources Code Section 5097.94, you know, although it  
8 has not been recorded as yet.

9         There were alternatives to avoid, you know, the  
10 destructive impact on this cultural site. The NAHC  
11 stands that -- understands from records provided it that  
12 there were both on-site and off-site alternatives  
13 available to the Padre Dam Municipal Water District that  
14 would have avoided or reduced impact on Native American  
15 burial grounds and cultural resources.

16         The on-site alternative includes three on-site  
17 designs prepared by the engineering firm, Black &  
18 Veatch, that may have reduced impact up to 60 percent  
19 and several off-site locations in close proximity to the  
20 existing project.

21         The NAHC further understands that these  
22 alternatives were not included in the CEQA documents for  
23 the approved mitigated negative declaration. They were  
24 not included for public or tribal review and comment.

25         The findings of our Staff investigation is as

1 follows: The Commission, in order to move forward, must  
2 find: (1) the investigative report and public testimony  
3 is sufficient to allow it to make a decision regarding  
4 the impact of this project; (2) it must determine that  
5 Padre Dam Municipal Water District is a public agency;  
6 (3) it must determine that the project site is on public  
7 property; (4) the site is a Native American sanctified  
8 cemetery, religious or ceremonial site, or sacred shrine  
9 located on public property; (5) the project will cause,  
10 if it goes forward, severe and irreparable damage to the  
11 site, to that burial ground, and to those Native  
12 American cultural resources.

13 Okay? Thank you very much. Mr. Chairman?

14 CHAIRMAN RAMOS: Thank you. I have several  
15 slips here for speaking.

16 First, I have a James Gillip or Gilpin,  
17 attorney for Padre Dam.

18 MR. GILPIN: Yes, sir.

19 CHAIRMAN RAMOS: Are you ready to speak or --

20 MR. GILPIN: Sure. I can just read --

21 CHAIRMAN RAMOS: No. I'm going to start  
22 reading them. Next after that is John Cook, and Micah  
23 Hale. Haley?

24 MR. HALE: Hale.

25 CHAIRMAN RAMOS: Those are the first two so



1 far. How much time would you need? You marked down 15  
2 minutes, and John didn't put any --

3 MR. GILPIN: I had included John and Micah with  
4 us as a team.

5 CHAIRMAN RAMOS: That's what I thought. They  
6 are together, right?

7 MR. GILPIN: Yes.

8 CHAIRMAN RAMOS: We have several speakers.  
9 We're going to try to keep it timely here.

10 MR. GILPIN: I appreciate it. I would like to  
11 make an inquiry since you are not going to. The next  
12 meeting you said you scheduled in the next month in  
13 Southern California?

14 CHAIRMAN RAMOS: Hopefully before that, but  
15 within three to four weeks to be safe, we've got to put  
16 it out.

17 MR. GILPIN: I appreciate that. That would be  
18 another public hearing, yes?

19 CHAIRMAN RAMOS: Yes.

20 MR. GILPIN: Yes, thank you for allowing me to  
21 speak. My name is Jim Gilpin. I'm the attorney for  
22 Padre Dam. By way of introduction, I grew up in Wyoming  
23 in a little town surrounded by the Wind River Indian  
24 Reservation. I'm not Indian or Native American, but I'm  
25 here for the first time in front of you on behalf of my

1 client. We submitted a large written letter to you with  
2 a lot of documentation.

3 UNIDENTIFIED WOMAN: Thank you.

4 MR. GILPIN: I have prepared a little executive  
5 summary for you if I can pass that out. That may help.

6 UNIDENTIFIED WOMAN: Is this a summary?

7 UNIDENTIFIED MAN: We read the whole book.

8 UNIDENTIFIED MAN: You read the whole book?

9 UNIDENTIFIED MAN: Now, you give us a summary.

10 MR. GILPIN: That's not really fair, is it? I  
11 should have sent the cliff notes.

12 UNIDENTIFIED WOMAN: A mini series. Thank you.

13 MR. GILPIN: What I've done and I'll try to  
14 summarize what's in our information is really to  
15 discuss, you know, some issues we have with the Staff  
16 report and to address issues regarding the process.

17 Specifically, I -- I think the process is  
18 critical. The statutes lay out a process that public  
19 agencies are going to need to go through. And I think  
20 the significance of today's action or the future action  
21 is really calling into question those processes that  
22 agencies going through projects need to deal with. They  
23 are outlined in -- in our papers we've outlined that  
24 Padre Dam followed all of the statutes in this case.

25 There has been some challenges relative to the



1 CEQA findings, but the CEQA document was adopted in  
2 November of 2008. The statute of limitations have all  
3 passed regarding that. I'll just raise that.

4 In addition, all of the information that the  
5 Staff is now relying on claiming existed, all existed  
6 prior to the agency's adoption of that mitigated neg.  
7 dec.

8 And I want to talk about a couple of findings  
9 that are in the Staff report which I find particularly  
10 troubling because, you know, my client was essentially  
11 vilified in terms of providing -- and accused of  
12 providing false information.

13 Specifically, the finding of human remains on  
14 the site, there were no human remains found on this site  
15 until February of '09. On his presentation and then  
16 report, Mr. Singleton represented that they first got a  
17 call in August of '09. In support of that, he submitted  
18 the Commission's own form.

19 We called the Medical Examiner's Office because  
20 the information in that form doesn't match any  
21 information we have, and, in fact, we confirmed with the  
22 Medical Examiner's Office that that was a report that  
23 was done in connection with another site in San Diego  
24 County, another site with another project by another  
25 entity.

1           So that information is just, in fact, wrong.

2           In fact, the property -- I think if you look at  
3 the information on its face, it calls into question --  
4 it wasn't even put into the computer until '09 when the  
5 report allegedly came in and -- what did I say? I  
6 misstated the '09 date. The '07 date, the August '07  
7 date. There was no finding until '09. So the '07 date  
8 is just purely wrong. There was no activity on the site  
9 on the date recorded on the report. We submitted to you  
10 records from the San Diego County Medical's Office  
11 verifying that the call came in on a different site.

12           In addition, what's real troubling is that NAHC  
13 Staff says they designated an MLD in August of '07.  
14 They say they designated KCRC with respect to this  
15 project. Well, KCRC wasn't designated as an MLD related  
16 to this project until February of '09, the first time  
17 the remains were found.

18           If, in fact, NAHC designated KRC -- or KCRC as  
19 the MLD related to this site in '07, they never notified  
20 the District. In fact, we had no communications with  
21 KCRC at that time as an MLD.

22           The other point of significance for us here is  
23 the designation of KCRC as the MLD. Once that -- I mean  
24 once the District discovered Native American remains on  
25 the site, found human remains, we contacted the coroner

1 who then notified NAHC who then contacted KCRC who then  
2 contacted us, came out to the site, did an inspection.  
3 We worked with KCRC for over eight months regarding  
4 coming up with mitigation measures to address the site.

5 And in October of '09, KCRC agreed to  
6 mitigation measures relative to the site that my client  
7 implemented. They had full data recovery.

8 As NAHC has said, we've turned over everything  
9 found at that site to KCRC whether it's of a religious  
10 nature or whether it's of archeological significance.  
11 We've just turned everything up. That's a decision  
12 Padre Dam made.

13 We worked with KCRC to come up with mitigation  
14 measures. In fact, the information relevant to the  
15 monument -- removal of that monument was done in  
16 agreement with KCRC to turn that rock into a monument to  
17 be placed at the site.

18 So all of that work was done in connection with  
19 an agreement with the MLD, and now suggesting, "Oh, you  
20 were just running roughshod over the site, Padre Dam,"  
21 is completely inaccurate.

22 The entire time that Staff contends they were  
23 conducting an investigation, from August of '09 until  
24 February of this year, the MLD in place at that site was  
25 KCRC. In February, I don't know what occurred, but KCRC

1 delegated its authority to Viejas.

2 It's a little peculiar in terms of whether  
3 that's allowed under the statute or not, but whatever.

4 We then tried to work with Viejas in terms of  
5 dealing with the site in terms of where we are. We let  
6 a project for construction of a water tower -- water  
7 tank that's necessary to provide redundant water service  
8 to East County, which Mr. Singleton indicated has been  
9 ravaged by wildfires in the last couple of years -- so  
10 this project is really of significance to us to provide  
11 redundant water source to East County. It's also  
12 critical in terms of ever being able to provide water to  
13 Native American Reservations in that area should that  
14 progress. And, you know, we've been in discussions over  
15 the years with Viejas relative to providing water, and  
16 my firm, myself, we have a history of working with our  
17 water districts, with Native American groups. We've  
18 worked with, for example, the Pechanga in Temecula in  
19 terms of delivering reclaimed water, delivering water  
20 through our facilities.

21 So that is something, you know, my client,  
22 including Padre Dam, thinks is of significance, in terms  
23 of working with the Native American community.

24 I think the importance of where we are is that  
25 this action could really undermine the trust that's been

1 developed between non-Native American agencies and  
2 Native American communities regarding dealing with these  
3 cultural resources. We came to an agreement as to how  
4 to deal with it. We implemented that agreement only to  
5 have the chair switched in February, now find ourselves  
6 dealing with a different entity.

7 I've outlined for you here what were the  
8 findings relative to the -- to the Native American  
9 remains on the site.

10 As indicated, they were all documented in the  
11 report prepared by ASM regarding the site. I've also  
12 included a summary chronology for you so you can see  
13 everything that occurred on this site, you know,  
14 beginning in December, January of 2000, up until 2008  
15 when mitigated neg. dec. was adopted up to working with  
16 the canine dogs on two occasions at the request of the  
17 Native American Monitors, going through this process,  
18 meeting with KCRC for a period of over eight months to  
19 come up with mitigation measures to deal with this site.

20 In its own letters, KCRC in October, you know,  
21 stated that they felt this was a cemetery and that  
22 the -- the remains should be dealt with according to  
23 their mitigation measures as recommended.

24 Go ahead.

25 COMMISSIONER MIRANDA: Do you have -- did you

1 provide us with the mitigation measures that KCRC agreed  
2 to in October '09?

3 MR. GILPIN: We did. They're in a letter.

4 COMMISSIONER MIRANDA: Exhibit S? And -- and  
5 then just to follow up to that, what is the time  
6 frame -- what -- I guess I'm not understanding. You  
7 said they agreed to -- you called it "full data  
8 recovery," and what -- what do you mean by that? And  
9 when did that process start? What's the time frame of  
10 that process?

11 MR. GILPIN: Sure. The -- when the human  
12 remains were found in February of '09, the coroner was  
13 notified, who then notified KCRC who came out and did a  
14 site visit in February. They agreed to a process to  
15 allow the full data recovery to go forward at that time  
16 while they made an attempt to decide what they were  
17 going -- you know, what mitigation measures would be  
18 appropriate.

19 COMMISSIONER MIRANDA: What does that mean,  
20 "full data"? What do you mean by saying that?

21 MR. GILPIN: It means anything at the site that  
22 was collected and turned over to KCRC for repatriation.

23 COMMISSIONER MIRANDA: In this letter from  
24 October?

25 MICAH HALE: I can answer that. We were



1 already in the data recovery process. We started that  
2 in February. What was agreed on was Padre Dam would  
3 agree to 3 to 5 percent excavation of the core site  
4 deposit. We ended up doing a 6 percent sample which was  
5 not full data recovery.

6 COMMISSIONER MIRANDA: Okay.

7 CHAIRMAN RAMOS: But along the way you  
8 uncovered more remains than just a single set, right?

9 COMMISSIONER MIRANDA: That's my next question.

10 CHAIRMAN RAMOS: We all agree it's eight --  
11 eight set of remains now?

12 MICAH HALE: It is 14 pieces of individual  
13 identified human remains.

14 UNIDENTIFIED MAN: But I think the coroner has  
15 identified --

16 UNIDENTIFIED MAN: Eight individuals.

17 COMMISSIONER RAMOS: Eight individuals, right?

18 MICAH HALE: From three to eight individuals  
19 have been identified as -- the minimal amount of  
20 individuals based on the bone elements.

21 CHAIRMAN RAMOS: But when you -- from the  
22 Native American perspective, when you get three or more,  
23 it starts to constitute more things on that site.

24 MICAH HALE: Absolutely.

25 COMMISSIONER MIRANDA: That happened -- I'm

1     sorry, if I can interrupt.

2             CHAIRMAN RAMOS: Go ahead.

3             COMMISSIONER MIRANDA: When that happened was  
4     during this time you were doing the 3 to 5 percent --

5             MICAH HALE: Right. We started on --

6             UNIDENTIFIED WOMAN: -- data recovery.

7             COMMISSIONER MIRANDA: Okay.

8             MICAH HALE: -- the last week of January we  
9     found human remains or what we thought --

10            CHAIRMAN RAMOS: That triggered the February  
11     2009 deal with the coroner?

12            MICAH HALE: Yes, exactly, February 4th, 2009.  
13     Work stopped. We called the coroner who hooked us up  
14     with Madeline Hinkes, the Medical Examiner. She came  
15     out to the site and examined all the bones, and at that  
16     time I think she identified six positively -- positive  
17     human remains with a number of other pieces that  
18     couldn't be ascertained, some other burial, human or  
19     not, but they were extremely calcined bones; bone burned  
20     when it was fresh.

21            COMMISSIONER MIRANDA: So you kept doing the  
22     data recovery.

23            MICAH HALE: So we stopped.

24            COMMISSIONER MIRANDA: Okay.

25            MICAH HALE: They had Paul Parker who called



1 the Native American Heritage Commission, and then we  
2 were put into contact with KCRC and set up the site  
3 visit for February 13th, and so on the 13th, Bernice  
4 Paipa and her associate, and Carmen Lucas, myself, John  
5 Cook from Padre Dam, a few representatives of Padre Dam,  
6 went to the site, talked about it, and at that point  
7 Bernice Paipa and Padre Dam decided that from that point  
8 forward, excavations would continue so that through --  
9 will continue working with Madeline Hinkes to identify  
10 potential human remains that were recovered, and in turn  
11 all identified artifacts would remain on-site in a  
12 storage locker.

13 COMMISSIONER MIRANDA: Okay.

14 MICAH HALE: So we continued with the data  
15 recovery until we hit our 6 percent sample in the core  
16 in midden deposit, and Madeline Hinkes identified  
17 further remains that brought us up to 14 positive  
18 identifications.

19 UNIDENTIFIED MAN: Bone fragments?

20 UNIDENTIFIED MAN: 199 possible pieces of human  
21 bone, and at that point, we set up a time with Clint  
22 Linton, from KCRC, the designated MLD, to come out to  
23 the site and get the bones, and that -- I think that  
24 happened on March 5th, which was the day of or the day  
25 after ASM's field director and Carmen Lucas went to

1 Madeline Hinkes again with additional pieces that were  
2 found in the data recovery.

3           So all of the remains that we had and all the  
4 items we set aside for potential collection were turned  
5 over to Clint Linton on March 5th, and then there was  
6 another piece of human bone that that we found in the  
7 lab, the lab work. We had the forensic anthropologist  
8 look at that, and there was a possible identification of  
9 another mandibular condyle, and at that point we called  
10 KCRC, notified them, and then called Clint Linton and  
11 that was given to Clint Linton on March 30th, and that  
12 was the end of our dealings with human remains or  
13 potential human remains. And --

14           COMMISSIONER MIRANDA: But that's because you  
15 finished --

16           MICAHA HALE: That's because we finished the  
17 excavation.

18           COMMISSIONER MIRANDA: -- the excavation of the  
19 site.

20           MICAHA HALE: The 6 percent sample --

21           COMMISSIONER MIRANDA: Okay.

22           CHAIRMAN RAMOS: So in that data recovery,  
23 there is also other associated goods also collected?

24           UNIDENTIFIED MAN: Yes, every piece of broken  
25 stone. There was a lot that we set aside, a couple pipe

1 fragments, and some -- you know, quartz crystal,  
2 arrowheads and other things that were grave goods.

3 CHAIRMAN RAMOS: Was there midden -- was it  
4 dark midden around the --

5 MICAH HALE: Yes, the archeological site  
6 deposit consisted of midden soil.

7 CHAIRMAN RAMOS: And with the fragments and  
8 associated goods, would it -- would you think it was a  
9 cremation site?

10 MICAH HALE: Well, it was -- it was from the  
11 remains that were burned, they were -- in my opinion,  
12 they were cremation remains.

13 CHAIRMAN RAMOS: So there were cremation  
14 remains in your opinion, and there was up to at least  
15 eight separate remains found in this cremation area?

16 MICAH HALE: No. What happened was we never  
17 found -- every piece of bone we found we found while we  
18 were water screening.

19 CHAIRMAN RAMOS: Okay.

20 MICAH HALE: And it was set aside to be  
21 analyzed at a time that was set up with Madeline Hinkes,  
22 the forensic anthropologist.

23 So there was a significant delay in -- after  
24 the first discovery, and when the remains were  
25 identified and while we dug so we'd excavate units, set

1 the artifacts and the remains aside to be identified and  
2 inspected at a later date.

3 CHAIRMAN RAMOS: So data recovery was collected  
4 in areas that you would -- in your opinion, be  
5 consistent with cremation.

6 MICAH HALE: Well, that's -- I can't say that,  
7 because we didn't find anything while we were digging.  
8 The deposit from an archeological perspective, it was  
9 modern material from top to bottom, and it was so moist  
10 and dark, we didn't find anything that would be called  
11 an archeological feature let alone a burial feature.

12 COMMISSIONER RAMOS: Yet we have eight remains  
13 out --

14 MICAH HALE: After the fact. I want to make  
15 the point. After the fact.

16 CHAIRMAN RAMOS: Getting back to the avoidance  
17 of this site, I think, Dave, you said there is a way  
18 this could have been avoided, because there was known  
19 sites there. Is that right or --

20 MR. SINGLETON: No. There were -- alternatives  
21 were considered by Padre Dam, we recently found out, you  
22 know, through an engineering analysis that might have  
23 avoided or minimized the impact on -- on the burial  
24 site. All the (inaudible) was discovered and the  
25 artifacts and cultural resources.

1           MR. GILPIN: To explain the site selection  
2 process, this is for a reservoir that has to connect  
3 into existing infrastructure, and because of engineering  
4 stuff that is beyond me, the tank has to be sited at a  
5 specific elevation in order so that it operates. It had  
6 to be within a certain geographic area.

7           So the District identified elevation sites in  
8 the area, you know, properties of the specific elevation  
9 that would allow this to function. Then they also then  
10 defined or identified certain sites of private property  
11 that could be purchased that were within that elevation.

12           There were three sites that were identified,  
13 and I think I've included that in Exhibit E or C of your  
14 materials showing those three sites. They didn't go  
15 through a site selection process. These are private  
16 properties. There was only one willing seller, which  
17 was this site. So the agency acquires this -- acquired  
18 this site.

19           So once you select the property for the site,  
20 then I think what we're discussing now is potential  
21 project on-site design, differences in -- in order to  
22 mitigate the site.

23           And three alternatives were proposed by Black &  
24 Veatch. Essentially, what they do is move the pumping  
25 facilities out of what has been identified as the core

1 area.

2 I've attached those diagrams to your materials.  
3 I believe it's Exhibit L -- I'm sorry. Yes. It's  
4 Exhibit L in your materials that show the three  
5 alternatives that were considered.

6 Those were considered in January of 2008, I  
7 believe, and were determined to not, you know -- not be  
8 feasible in light of the fact that they wouldn't have  
9 fully mitigated impacts to the site area.

10 Specifically, they wouldn't have avoided the  
11 rock outcropping area and would have just moved some --  
12 the pumping facilities out of a portion of the area to  
13 another site.

14 JOHN COOK: Also, showing in the presentation,  
15 also at the time that we looked at engineering  
16 alternatives and Carmen Lucas was present at the  
17 meeting, at that juncture, we were in the evaluation  
18 phase, and no human bone had been identified, so that  
19 when they -- when the District looked at it, they had no  
20 reason to figure that only from an archeological  
21 standpoint the work could have gotten taken care of.  
22 They were looking at a lot of money, and no human  
23 remains, so they were -- had to make a decision and  
24 said, "Well, you know, at this juncture, I don't think  
25 it makes any sense."



1 COMMISSIONER MIRANDA: But you knew an  
2 archeological site was there.

3 JOHN COOK: Certainly, oh, yeah, but, you know,  
4 most archeological sites do not have human bone, and  
5 when this site was initially examined, it did not appear  
6 to be the type of site that would have human bone added.

7 CHAIRMAN RAMOS: As examined how? You did --

8 JOHN COOK: Well, we did both -- we didn't do  
9 the survey. The survey was done by EDAW.

10 CHAIRMAN RAMOS: And then you guys came in  
11 later.

12 JOHN COOK: We came in and did what we call the  
13 evaluations for the California Registered Historic  
14 Resources eligibility, and we dug a series of STPs and  
15 one-by-one units throughout the site, and there was soil  
16 discoloration and midden directly adjacent to the unit.  
17 So we dug in the areas where we felt would have the  
18 greatest potential to yield information regardless of  
19 whether it was archeological or Native American. And at  
20 that juncture we did not find any new bones that was  
21 identifiable.

22 LARRY MYERS: How long did it take between the  
23 time you dug the dirt out and you wet-screened it?

24 MICAH HALE: I would say it probably delayed  
25 for each bucket of dirt 10, 15 minutes in four hours.

1           LARRY MYERS: So you knew that as soon as you  
2 dug it out, within a few hours, that there was human  
3 bone in there.

4           MICAH HALE: No, we didn't know that, because  
5 we had to get it identified. So there -- so there was  
6 small pieces of bone that we needed Madeline Hinkes to  
7 make the identification.

8           MR. GILPIN: Talk about the size of the wet  
9 screen.

10          MICAH HALE: Well, yeah, we -- we used an  
11 eighth-inch wet screen and dried it on 30-second nylon  
12 mesh. That was, you know, at the request of Carmen. We  
13 dug about three levels without wet screen.

14          LARRY MYERS: And how long did it take you to  
15 ask the Medical Examiner to come out to take a look?

16          MICAH HALE: Well, we -- we had -- I think we  
17 had one site visit, and then after that we met with our  
18 field director and probably met with her, I think, one  
19 other time, on March 4th -- at the end of the data  
20 recovery, and, you know, we weren't -- we -- we were  
21 continuing our data recovery after the           February  
22 13th meeting when KCRC told us to continue digging.

23          COMMISSIONER SHERMAN: Do you have anything  
24 from KCRC that shows that they said that?

25          MICAH HALE: Meeting notes that we --



1 COMMISSIONER SHERMAN: Because I think the  
2 letter you have in here is from October, which is later.

3 MICAH HALE: I have an email from Bernice Pipa  
4 saying we could continue.

5 LARRY MYERS: One other quick question: You  
6 did recover 6 percent.

7 MICAH HALE: Yes.

8 LARRY MYERS: So could there be, like, 94  
9 percent out containing human remains?

10 MICAH HALE: That's the thing. We didn't  
11 excavate a hundred percent of the cultural deposit, and  
12 the likelihood of finding another piece of human bone in  
13 the surrounding matrix --

14 LARRY MYERS: Pretty high.

15 And you're going to be back there doing more  
16 work, right, turning up more soil?

17 COMMISSIONER MIRANDA: No.

18 UNIDENTIFIED WOMAN: No.

19 UNIDENTIFIED MAN: I have not.

20 UNIDENTIFIED WOMAN: No.

21 MICAH HALE: Yeah. It's very difficult. We're  
22 talking about small pieces of bone. So Courtney's  
23 right, we would have to water screen the deposit to find  
24 it, and I would say that as you move out, and you can  
25 see now from the surface of the site, that the midden